

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHEN ALAN KELLOGG,) Case No. C05-955-MJP-JPD
Petitioner,)
v.)
DR. ANDREW PHILLIPS,) ORDER DENYING PETITIONER'S
Respondent.) MOTION FOR APPOINTMENT OF
) COUNSEL
)

This matter comes before the Court on petitioner's motion for appointment of counsel. Dkt. No. 7. Having considered petitioner's motion and the available court record, the Court ORDERS as follows:

(1) Petitioner's motion for appointment of counsel, Dkt. No. 7, is DENIED. There is no right to have counsel appointed in cases brought under 28 U.S.C. § 2254, unless an evidentiary hearing is required. *See Terravona v. Kincheloe*, 852 F.2d 424, 429 (9th Cir. 1988); *Brown v. Vasquez*, 952 F.2d 1164, 1168 (9th Cir. 1992); and R. Gov. § 2254 Cases in U.S. Dist. Cts. 8(c). An evidentiary hearing is mandatory only if (1) the petitioner's allegations, if proved, would establish the right to relief; and (2) the state court trier of fact has not, after a full and fair hearing, reliably found the relevant facts. *Van Pilon v. Reed*, 799 F.2d 1332, 1338 (9th Cir. 1986). The Court may exercise its discretion to appoint counsel for a financially eligible individual where the "interests of justice so require." 18 U.S.C. § 3006A(a)(2).

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01 Here, petitioner has provided no factual or legal basis that indicates an evidentiary
02 hearing is required. Moreover, petitioner's current motion fails to demonstrate that the
03 interests of justice are best served by appointment of counsel in this matter at the present
04 time. His motion is therefore denied.

05 (2) The Clerk shall direct copies of this Order to petitioner, to counsel for
06 respondent, and to the Honorable Marsha J. Pechman.

07 DATED this 8th day of August, 2005.

08 
09 JAMES P. DONOHUE
10 United States Magistrate Judge